

1 [The military commission was called to order at 1409, 31 July 2008.
2 All parties present when the commission recessed were once again
3 present.]

4 MJ [CAPT ALLRED]: Court's in session. Mr. Schneider, why don't
5 you finish your cross-examination?

6 **CROSS-EXAMINATION**

7 **Questions by defense counsel:**

8 Q [MR. SCHNEIDER]: Mr. [REDACTED] I wanted to finish up with
9 just a couple questions. I asked you about a couple of interviews
10 and whether you knew that Mr. Hamdan had denied that there was ever
11 any bayat. I think that was January 30th, 02, and if we could go to
12 the slide. I asked you about that. Let's go to 19 August 2002, [REDACTED]
13 [REDACTED] and Detective [REDACTED] But I didn't ask you about August
14 24th. Did you realize that Mr. Hamdan was asked about that question
15 at that interview and he said that there was no bayat that he ever
16 gave?

17 A [MR. [REDACTED]] No to both parts of the question.

18 Q [MR. SCHNEIDER]: Okay. With respect to whether those notes
19 are related to fines, if we could go to the ELMO. With the court's
20 permission, I would like to just use this as a demonstrative aid.
21 It's not going to go into evidence, but does this help you remember,
22 or can you tell us if that could be published on the other monitors
23 as well?

1 MJ [CAPT ALLRED]: Let's have the witness identify it.

2 Q [MR. SCHNEIDER]: What is it?

3 A [MR. ██████████] It looks to be a cover sheet, with someone
4 typed in "Agent Notes 17 May 2003 interview."

5 Q [MR. SCHNEIDER]: The interview we spoke about this morning?

6 A [MR. ██████████] That would be correct.

7 Q [MR. SCHNEIDER]: Does that help you--does that refresh your
8 recollection that the pages that follow are his notes?

9 A [MR. ██████████] If the question is for me to validate or
10 verify that they're his notes, I just simply cannot.

11 DC [MR. SCHNEIDER]: I would offer this into evidence, Your
12 Honor. It's a document produced by the government, production page
13 number 231 through 235. We were told they were agent notes of Agent

14 ██████████

15 MJ [CAPT ALLRED]: You're going to offer into evidence an Arabic
16 document that nobody can read?

17 CDC [MR. SCHNEIDER]: Just for purposes of showing that the
18 interview--that the notes were made and that those are ██████████
19 notes.

20 MJ [CAPT ALLRED]: You can't even authenticate it.

21 Q [MR. SCHNEIDER]: You've never seen this before?

22 A [MR. ██████████] I'm not sure if I've seen those before, but
23 again the heart of the issue is for me to authenticate that they are

1 the notes from him for that interview. I just simply don't know.

2 Q [MR. SCHNEIDER]: If you looked at them, could you tell?

3 CTC [MR. MURPHY]: Objection, Your Honor. This has been asked
4 and answered, and he says he can't identify them and further
5 questioning beyond that I think is inappropriate.

6 MJ [CAPT ALLRED]: I'll let him ask this question. If you looked
7 at them could you tell; that's the question.

8 A [MR. ██████████] In looking at them before briefly, I can tell
9 they pertain to the interview. But as discussed in previous hearing,
10 until the weekend, the first weekend we were here on this trip, the
11 issue of notes for me that related to this case had not come up. So
12 my point there is from the time of 17 May through the 25th of May I
13 don't know what happened to the notes, especially Special Agent
14 ██████████ notes. But again, I can tell that it relates to the
15 interview of Mr. Hamdan.

16 Q [MR. SCHNEIDER]: Who was the only person in that interview
17 taking notes in Arabic?

18 A [MR. ██████████] It would have been Mr. ██████████

19 Q [MR. SCHNEIDER]: Okay. Then, second to the last question--
20 second--those notes in Arabic are how many pages?

21 A [MR. ██████████] What I was just handed is one page of Arabic,
22 a hard page, and the back, and then two photographs.

23

1 Q [MR. SCHNEIDER]: A couple pages of notes?

2 A [MR. ██████████] Not even.

3 Q [MR. SCHNEIDER]: Not even. You took a couple pages of notes
4 and you generated an 11-page single spaced typewritten report,
5 correct?

6 A [MR. ██████████] Yes, sir. It was a data-intensive interview.

7 Q [MR. SCHNEIDER]: Did you ever talk to Mr. Hamdan about the
8 possibility of giving a phone call to his family in May of 2003?

9 A [MR. ██████████] Yes.

10 Q [MR. SCHNEIDER]: And you knew that Mr. ██████████ had been able
11 to talk to Mr. Hamdan and had facilitated a phone call the year
12 before, right?

13 A [MR. ██████████] Not until this hearing.

14 Q [MR. SCHNEIDER]: Okay. Did you spend all your time
15 interviewing Mr. Hamdan before you told him whether or not he would
16 actually get the call?

17 A [MR. ██████████] Well, as part of the interview, from what I
18 recall, we discussed if Mr. Hamdan would like a telephone call home
19 to his family. So I hadn't been down at Guantanamo for a few weeks,
20 maybe a few months. Previously we had been able to do that quite
21 easily.

22

23

1 Q [MR. SCHNEIDER]: I think I can ask it more precisely. Isn't
2 it true that you talked about getting a phone call, that you
3 completed your entire interview on the 17th, the 9-1/2 hours, then
4 went back on the 25th of May to tell him he was not going to get the
5 phone call? True?

6 A [MR. ██████████] That's true.

7 Q [MR. SCHNEIDER]: Last question: Did you do a report of your
8 interview with Bin Attash?

9 A [MR. ██████████] Walid bin Attash? I've interviewed two other
10 bin Attashes.

11 CTC [MR. MURPHY]: Your Honor, we're going to object as to
12 relevance, as to other aspects of other cases that this agent has
13 worked on. There's no relevance here.

14 CDC [MR. SCHNEIDER]: There is if he asked him about Mr. Hamdan.

15 MJ [CAPT ALLRED]: Okay, I'll let you ask the question.

16 Q [MR. SCHNEIDER]: Did you do a written report of your
17 interrogation of any bin Attash?

18 A [MR. ██████████] Written reports of the three bin Attash
19 brothers I had interviewed, yes.

20 Q [MR. SCHNEIDER]: Are you aware that that's not been produced
21 to us because there's nothing in the report about Mr. Hamdan?

22 A [MR. ██████████] No to both parts of the question, or what you
23 just submitted. I was not aware of that.

1 DC [MR. SCHNEIDER]: No further questions. That wasn't quite
2 three minutes, Mr. [REDACTED] I was wrong.

3 **REDIRECT EXAMINATION**

4 **Questions by trial counsel:**

5 Q [MR. MURPHY]: Special Agent [REDACTED] there's been a lot of
6 questions about rough notes on cross-examination. I want to make
7 sure that the members fully understand the role they play in how your
8 final report is ultimately prepared. Let's just start very
9 basically. What's the role of rough notes when agents go in to
10 conduct an interview?

11 A [MR. [REDACTED]] Well, generally speaking it depends on what
12 organization a federal agent may work for, what the training pattern
13 is, what the requirements of the organization are for notes, and then
14 their own personal style. But generally speaking, to refresh for
15 when the final report is made, though, what I mentioned before,
16 rarely if ever I've seen a verbatim transcript outside of a sworn
17 statement.

18 Q [MR. MURPHY]: And are each and every agent in an interview
19 taking all the rough notes, or is it an assigned task?

20 A [MR. [REDACTED]] Well, excuse me. Again, it depends on the
21 circumstances. For the interview of Mr. Hamdan--and I have worked
22 with Mr. [REDACTED] so much before--we agreed the substantive notes he
23 would take unless we coordinated with each other and then I would

1 switch to taking notes.

2 Q [MR. MURPHY]: All right. Did you feel it was necessary for
3 both Mr. [REDACTED] and yourself to both be taking the same notes at
4 the same time?

5 A [MR. [REDACTED]] No, we would have avoided that, the creation
6 of notes about the same issues at the same time.

7 Q [MR. MURPHY]: All right. Is there anything unusual about
8 that practice in an interview, where one agent is taking notes at one
9 period and another is not, and then another agent will pick up taking
10 the notes and the other will stop?

11 A [MR. [REDACTED]] No, sir. In fact, I find that it works quite
12 well.

13 Q [MR. MURPHY]: All right. After the interview's conducted and
14 you have the rough notes, how did you and the other agent utilize
15 those rough notes in producing a final report?

16 A [MR. [REDACTED]] Well, if we're talking about the interviews
17 with Mr. Hamdan?

18 Q [MR. MURPHY]: Right, and let's take that specific, right.

19 A [MR. [REDACTED]] So our recollection is so fresh after an
20 important interview like that is a critical part of putting together
21 what was the Form 40. So in compiling, transcribing whatever notes
22 are there, in this case, as you saw, into the rough draft, then first
23 my review, his review that it's complete and accurate, and then make

1 any edits, and then compile the final report for submission.

2 Q [MR. MURPHY]: How long after you're doing an interview are
3 you actually preparing the final report?

4 A [MR. ██████████] In this case, we started on that the evening,
5 the same evening following the interview with Mr. Hamdan.

6 Q [MR. MURPHY]: The information Mr. Hamdan provided to you was
7 very fresh in your mind?

8 A [MR. ██████████] That's correct.

9 Q [MR. MURPHY]: Is there any doubt that you have on any of your
10 testimony today in the accuracy of the information you've provided?

11 A [MR. ██████████] No, sir.

12 Q [MR. MURPHY]: And is it also accurately reflected in your
13 typed written report?

14 A [MR. ██████████] Absolutely, yes, sir.

15 Q [MR. MURPHY]: Do you believe that any of the questions asked
16 by defense regarding rough notes cast any doubt on the accuracy of
17 your testimony?

18 A [MR. ██████████] Do I have any doubt?

19 Q [MR. MURPHY]: Right.

20 A [MR. ██████████] I have little doubt.

21 [END OF PAGE]

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1 Q [MR. MURPHY]: All right. You were asked some questions about
2 written answers by high-value detainees and whether you had seen
3 these written questions and written answers. Do you recall that part
4 of cross-examination?

5 A [MR. ██████████] Yes, sir.

6 Q [MR. MURPHY]: You have not seen those written answers, is
7 that right?

8 A [MR. ██████████] That's correct.

9 Q [MR. MURPHY]: And is it true that you also may be a witness
10 in a case being prepared against certain high-value detainees; is
11 that right?

12 A [MR. ██████████] Potentially, from what I understand.

13 Q [MR. MURPHY]: Is it your understanding that it's common not
14 to show potential witnesses all of the evidence, so that they can
15 testify exclusively from what they know?

16 A [MR. ██████████] Yes, sir, particularly as the case would be
17 coming nearer to the point, for example, between arraignment and
18 trial.

19 Q [MR. MURPHY]: Does it seem at all unusual that you may not be
20 shown all of the evidence in the case?

21 A [MR. ██████████] It doesn't seem unusual, and I'll also add
22 that I'm not full-time at this point assigned to the task force for
23 the high value detainees. I'm on an adjunct basis at this point, so

1 that might also explain why I wouldn't--I hadn't really even heard
2 about that up to today.

3 Q [MR. MURPHY]: Based on your experience as a law enforcement
4 officer, is it advisable that witnesses not see every bit of other
5 evidence so they can reliably say, I'm only testifying about what I
6 know?

7 A [MR. ██████████] That's standard practice, I would say, from my
8 experience.

9 Q [MR. MURPHY]: All right. Mr. Schneider asked you a lot of
10 questions about the many agents and also agencies that were involved
11 in the investigation of Mr. Hamdan. Do you remember that list and
12 also the discussion of agencies that were involved in this case?

13 A [MR. ██████████] Yes, sir.

14 Q [MR. MURPHY]: Do you believe it was important to put
15 substantial resources into this investigation?

16 A [MR. ██████████] Yes, sir.

17 Q [MR. MURPHY]: Why is that?

18 A [MR. ██████████] Well, again, for Mr. Salim Hamdan, his place,
19 and what we know about the structure of al Qaeda, he's an important
20 person that quite reasonably resources, if not the best resources
21 available, would seek to interview and obtain information.

22

23 Q [MR. MURPHY]: All right. Now, regarding your particular

1 participation in this, were there some special reasons why it was
2 important to you--to this investigation, that you be a part of this
3 interview?

4 A [MR. ██████████] I'll give reasons why I think, without knowing
5 the specific strategy behind it. Extensive work in places like Yemen
6 and the many, many interviews conducted of subjects, witnesses, and
7 other sources of information in Yemen and other places in the Arabian
8 Gulf; and long-term familiarity with the al Qaeda and prior to us
9 knowing that as a term for bin Laden's organization.

10 Q [MR. MURPHY]: All right. Now, without going into the substance
11 of the interview, prior to interviewing Mr. Hamdan did you interview
12 Mr. Hamdan's brother-in-law, Jandal?

13 A [MR. ██████████] Yes.

14 Q [MR. MURPHY]: Was it an extensive interview?

15 A [MR. ██████████] Yes, extensive.

16 Q [MR. MURPHY]: And about how long, approximately how long was
17 your official report of him?

18 A [MR. ██████████] How long was the report?

19 Q [MR. MURPHY]: Right, in terms of pages, approximate pages.

20 A [MR. ██████████] I believe there were two reports, FBI Form 302.
21 I never actually counted the pages, but I'd be surprised if it was less
22 than 65 to 70 pages in total.

23 Q [MR. MURPHY]: Is that long as far as FBI 302/Form 40 reports?

1 A [MR. ██████████] Relatively speaking, yes, from my experience.

2 Q [MR. MURPHY]: Did you bring your investigative experience,
3 including an interview of his brother-in-law, to your work in this
4 case?

5 A [MR. ██████████] Yes, sir.

6 Q [MR. MURPHY]: Did that make you uniquely suited to be involved
7 in this investigation?

8 A [MR. ██████████] I would say that's accurate, yes.

9 Q [MR. MURPHY]: Regarding the rights advisement that Mr.
10 Schneider asked you about and how you had provided rights advisements
11 in some contexts and not in others, is there a unique mission that
12 you're aware of at Joint Task Force Guantanamo Bay that makes it
13 different from a regular law enforcement setting?

14 A [MR. ██████████] Yes.

15 Q [MR. MURPHY]: How would you describe that?

16 A [MR. ██████████] Well, in the most basic sense, these are
17 individuals that for the most part overwhelmingly have come from the
18 field of battle, transported to what was determined to be the location
19 for longer term detention. So coming from the field of battle, while
20 U.S. leadership has declared that there's a war in fighting and
21 combating al Qaeda and others that associate with them, you have
22 individuals that typically during those times subject to questioning
23 from various people, including from the intelligence side, where

1 there's no aspect of law enforcement mission. So I could see where
2 that would make for a situation, a complicated situation.

3 Q [MR.MURPHY]: All right. You were aware of the vital
4 intelligence mission when you were doing these interviews, is that
5 right?

6 A [MR. ██████████] Generally, yes.

7 Q [MR. MURPHY]: And you viewed your work as in support of that
8 mission, is that right?

9 A [MR. ██████████] In part, yes.

10 Q [MR. MURPHY]: Mr. Schneider asked you about cooperation and was
11 the accused generally cooperative with you. You interviewed him on
12 which particular date?

13 A [MR. ██████████] 17th of May 2003, and the 25th of May.

14 Q [MR. MURPHY]: You're aware that he was captured on 24 November
15 2001, is that right?

16 A [MR. ██████████] Yes, that's correct.

17 Q [MR. MURPHY]: Would you agree that if he told the people that
18 captured him everything he told you, that that would have been timely
19 and potentially useful battlefield information?

20 A [MR. ██████████] Yes.

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23 Q [MR. MURPHY]: What you got was years later from the point of

1 his capture?

2 A [MR. ██████████] Yes, sir.

3 Q [MR. MURPHY]: Mr. Schneider asked you if he was part of the
4 inner circle. Is it true--inner circle of al Qaeda, is it true that he
5 provided, based on your interview and investigation, critical and
6 valuable protective services to the inner circle of al Qaeda?

7 A [MR. ██████████] Yes, sir.

8 Q [MR. MURPHY]: And would an example of that be serving as an
9 armed bodyguard?

10 A [MR. ██████████] Yes.

11 Q [MR. MURPHY]: And serving as an armed driver?

12 A [MR. ██████████] Yes.

13 Q [MR. MURPHY]: And transporting weapons, ammunition, and SA-7
14 missiles?

15 A [MR. ██████████] Yes.

16 Q [MR. MURPHY]: How would you describe his relationship to the
17 inner circle of al Qaeda?

18 A [MR. ██████████] Well, if our definition of the "inner circle"
19 refers to those who actually plan the operations and give the order to
20 carry out the operation, his relationship and daily exposure was
21 constant, as well as the support to a structure that keeps the inner
22 circle, starting with Osama bin Laden, working and doing things that
23 are so deadly, so lethal.

1 Q [MR. MURPHY]: Is it fair to say that he helped the inner circle
2 carry out the mission of al Qaeda?

3 A [MR. ██████████] I would characterize it that way, yes, sir.

4 Q [MR. MURPHY]: Mr. Schneider also asked you about others that
5 were present on the island during your interview in May 2003. He
6 referred to psychologists, analysts, a BSCT team, and an attorney.
7 Just so we're clear, who was in the room during the entirety of the
8 interviews?

9 A [MR. ██████████] For the interview room, just myself, Mr.
10 ██████████ and Mr. Hamdan.

11 Q [MR. MURPHY]: None of those other people I mentioned were in
12 the interview room itself, is that right?

13 CDC [MR. SCHNEIDER]: Objection. It's been asked and answered.
14 Leading.

15 MJ [CAPT ALLRED]: That was leading. Sustained.

16 Q [MR. MURPHY]: All right. How would you describe the role of
17 each of those people as it related to your interview work? The
18 psychologists, the analysts, the attorney, and the BSCT team members?

19 A [MR. ██████████] In thinking back during that period in May
20 2003, I think I believe it was designed to provide consultation, input
21 for us. It may have even been an experiment, because that was the
22 first time I ever had that team concept that the CITF was trying to
23 develop. If the question is what was the input----

1 Q [MR. MURPHY]: Right, and how did it influence you in the
2 conduct of your interviews?

3 A [MR. ██████████] Would say next to, if not, nothing.

4 Q [MR. MURPHY]: Were the interviews your own?

5 A [MR. ██████████] Yes, sir.

6 Q [MR. MURPHY]: They were conducted the way you wanted them to be
7 conducted?

8 A [MR. ██████████] That's correct, and Mr. ██████████

9 Q [MR. MURPHY]: You were not some instrument of someone behind
10 the screen asking you to do or don't do things?

11 CDC [MR. SCHNEIDER]: Objection. Leading.

12 MJ [CAPT ALLRED]: Sustained.

13 Q [MR. MURPHY]: All right. Do you work with attorneys during
14 your investigation of cases?

15 A [MR. ██████████] Yes, sir.

16 Q [MR. MURPHY]: Do you consult with them during the development
17 of cases?

18 A [MR. ██████████] Depending on which part of the case, that would
19 be correct.

20 [END OF PAGE]

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23 Q [MR. MURPHY]: Is there anything unusual to you about having an

1 attorney be available as a consultant or an adviser during the course
2 of an investigation of a case?

3 A [MR. ██████████] During the course of the investigation, I
4 wouldn't consider that unusual.

5 Q [MR. MURPHY]: Mr. Schneider talked to you about some policies
6 that he read to you about setting interview conditions, where the
7 investigator or the interviewer would attempt to foster dependency,
8 create disorientation, and use sleep deprivation as an aid to get
9 information during interviews. Did you utilize any of that?

10 A [MR. ██████████] No. No, sir.

11 Q [MR. MURPHY]: Were you concerned about his well-being when you
12 were interviewing him?

13 A [MR. ██████████] As for any interview, yes, I was.

14 Q [MR. MURPHY]: Did you make explicit inquiry on how he was
15 doing?

16 A [MR. ██████████] Yes.

17 Q [MR. MURPHY]: And if he indicated that there was some sort of
18 problem of any kind that you thought was influencing or affecting an
19 interview, what would you have done about it?

20 A [MR. ██████████] If there was a problem that would have
21 precluded an interview, I'd try to determine what it was and then, if
22 it's something that we might be able to impact, check into it and, God
23 willing, take care of it if it was part of the matter.

1 Q [MR. MURPHY]: Mr. Schneider asked you a number of questions
2 about bayat and also referenced back to some of the rough notes. Do
3 you have a clear understanding of what this accused said about bayat
4 and bayat that he pledged?

5 A [MR. ██████████] Yes, sir.

6 Q [MR. MURPHY]: What is that?

7 A [MR. ██████████] Characterizing overall?

8 Q [MR. MURPHY]: Right, his admission regarding bayat.

9 A [MR. ██████████] I'm not sure.

10 Q [MR. MURPHY]: Do you have a clear understanding of what Mr.
11 Hamdan told you about him pledging bayat?

12 A [MR. ██████████] Yes.

13 Q [MR. MURPHY]: What is your understanding of that?

14 A [MR. ██████████] He said that he pledged bayat to Osama bin
15 Laden.

16 Q [MR. MURPHY]: Is there anything in the rough notes that Mr.
17 Schneider questioned you about that causes you to doubt that as
18 reliable information that you can provide to these members today?

19 A [MR. ██████████] No, sir.

20 [END OF PAGE]

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23 Q [MR. MURPHY]: Based on your interview into al-Qaeda, do you

1 have reason to believe why someone might be reluctant to admit that
2 they'd pledged bayat?

3 A [MR. ██████████] Yes, sir.

4 Q [MR. MURPHY]: Why is that?

5 A [MR. ██████████] Well, in understanding the concept, in the
6 tradition in Islam, from what I've read and heard from others that know
7 about it, it's generally something that is kept secret. But knowing
8 the practical realities, too, if say host nation services in the Gulf
9 countries know that an individual in the country has pledged bayat to
10 al-Qaeda, to Osama bin Laden, I could see where it would be problematic
11 for that individual.

12 So you have that cultural part or the traditional part that
13 keeps it below the radar, if you will, but then also the practical
14 part. From my experience I could see where an individual will be
15 reluctant to talk about it. At times, again empirically speaking,
16 there have been subjects of interviews that have talked about others
17 that would pledge bayat, but generally not about themselves, for some
18 of the things I mentioned.

19 Q [MR. MURPHY]: Based on your research and investigation in the
20 area of al Qaeda, would it make sense to you that someone would be
21 allowed to carry a weapon and a radio literally feet away from Osama
22 bin Laden without pledging bayat?

23 CDC [MR. SCHNEIDER]: Objection, beyond the scope of cross.

1 MJ [CAPT ALLRED]: I'll overrule.

2 A [MR. ██████████] In discussing this topic with Mr. Hamdan, he
3 made comments about that, that, both for--if you're asking for me,
4 would it make sense?

5 Q [MR. MURPHY]: Right.

6 A [MR. ██████████] It would absolutely not make sense for pledging
7 bayat. Again, from my experience, others that I have interviewed, and
8 knowing about the topic.

9 Q [MR. MURPHY]: Why would it not make sense that someone would
10 not pledge bayat and yet be trusted to carry a weapon and a radio near
11 UBL?

12 A [MR. ██████████] Well, from hearing what Mr. Hamdan said, it
13 confirmed and validated previous things that I had heard, that it would
14 be illogical for anyone to be that close to Osama bin Laden with a
15 weapon, because generally, usually, almost always, from what we know,
16 it's only the bodyguards and those trusted that are allowed to have
17 weapons in that close a proximity of the sheik.

18 Q [MR. MURPHY]: And within the context of al Qaeda as an
19 organization, what does it mean when one pledges UBL--one pledges bayat
20 to UBL?

21 A [MR. ██████████] That it's a sworn oath to carry out the, in
22 this case, the ultimate goal of expelling the infidels, the
23 unbelievers, sometimes characterized as "crusaders and Jews," from the

1 Arabian Peninsula.

2 Q [MR. MURPHY]: Mr. Schneider asked you a lot about the food that
3 you made available, Fig Newtons, tea, and all the rest. Was there any
4 sinister motive behind you making those available to Mr. Hamdan?

5 A [MR. ██████████] No, sir. It's about hospitality.

6 Q [MR. MURPHY]: Was it an effort to keep him awake? Did he
7 appear drowsy to you?

8 A [MR. ██████████] No. As I answered before, I don't recall at
9 any time Mr. Hamdan appearing drowsy. But the dates or sweets as an
10 effort, let's say for argument if he was, to keep him awake, that would
11 not have all been part of the interview.

12 Q [MR. MURPHY]: All right. You see no coercion in the food and
13 drink you offered?

14 A [MR. ██████████] That's correct, no coercion.

15 Q [MR. MURPHY]: Regarding the admission that Mr. Hamdan made to
16 you that his reaction and others' reaction to the attacks on East
17 Africa, on the COLE, and 9-11, and his support of UBL could be
18 characterized as uncontrollable enthusiasm, are you certain that that
19 is the meaning that Mr. Hamdan intended to convey to you?

20 A [MR. ██████████] I am certain based on, again, discussion and
21 clarification with my partner at the time.

22
23 Q [MR. MURPHY]: Is there any discussion that Mr. Schneider had

1 with you with the rough notes that causes you to doubt that in any
2 manner?

3 A [MR. ██████████] It does not cause me doubt, no, sir.

4 Q [MR. MURPHY]: You mentioned that there was word choice between
5 now, Arabic word choice, between now and earlier testimony. Can you
6 help explain that so we might better understand that, and is there
7 really a true meaning, difference in the meaning of these words?

8 A [MR. ██████████] Well, again with the preface that I'm a non-
9 native speaker, I acknowledge my rustiness, having been away from the
10 language on a daily basis. In fact, the last time on a daily basis was
11 a number of months ago in Yemen.

12 So that was the first thing that sprang to mind previously.
13 But when I thought about it, if it made sense grammatically it would
14 have to be "comma, Jidden," perhaps. But on reflection, it was a
15 unique term for me as a non-native speaker who somewhat understood
16 "Hammas," of course. But then the adjective, in discussion either
17 during or right after the interview Mr. ██████████ explained it for me.

18 Q [MR. MURPHY]: All right. And as you've reported to us, what
19 Mr. Hamdan said about uncontrollable enthusiasm relates to what
20 specifically?

21 A [MR. ██████████] His-----

22 CDC [MR. SCHNEIDER]: Objection, leading, hearsay. We're about to
23 hear what Mr. ██████████ explanation is.

1 CTC [MR. MURPHY]: No, Your Honor. I'm asking what this witness
2 remembers, so it's not hearsay, and it's an admission by the accused.
3 It's an area that the defense has gone into on cross.

4 MJ [CAPT ALLRED]: Ask your question again if you would, please.

5 Q [MR. MURPHY]: Is there any doubt in meaning of what Mr. Hamdan
6 said to you regarding the phrase "uncontrollable enthusiasm"?

7 CDC [MR. SCHNEIDER]: No objection to that question.

8 MJ [CAPT ALLRED]: Very good. Thank you.

9 A [MR. ██████████] No.

10 Q [MR. MURPHY]: And what did it relate to?

11 A [MR. ██████████] It related to his personal feelings about Osama
12 bin Laden.

13 Q [MR. MURPHY]: And is it in relation to attacks in particular?

14 A [MR. ██████████] Well, in another part of the interview, in
15 reflection from the Form 40, there was discussion about the broader
16 sense of things like passion, instilling motivation, where it was
17 mentioned as examples, East Africa, the COLE, and 9-11.

18 Q [MR. MURPHY]: And what did he say about his reaction to those
19 events?

20 A [MR. ██████████] That it was inspiring.

21
22
23 Q [MR. MURPHY]: Was it inspiring to others in general or him as

1 well as others?

2 A [MR. ██████████] Well, in the context of talking about the
3 examples, from what I recall, Mr. Hamdan said it inspired the group he
4 was with.

5 Q [MR. MURPHY]: All right.

6 A [MR. ██████████] And I'm using general characterizations of
7 something more along the lines of "passion," which if that's synonymous
8 with "inspiration," to be determined.

9 Q [MR. MURPHY]: And even though you're not a native Arabic
10 speaker, you do understand Arabic very well; is that right?

11 A [MR. ██████████] Generally, a conversational skill. But at this
12 point, with help right now, when I'm in country. In my years when I
13 was assigned to Bahrain, for example, and Dubai and Jordan, much
14 better.

15 Q [MR. MURPHY]: All right. I just want to ask you finally on the
16 follow-up meeting you had with him on May 25th. Anything of substance
17 at that meeting in terms of admissions?

18 A [MR. ██████████] Not that I recall.

19 Q [MR. MURPHY]: What was the purpose of showing up on the 25th?

20 A [MR. ██████████] The main purpose was to follow up on the
21 requests that we had discussed with Mr. Hamdan. There's always in this
22 situation, we'll do our best and work very hard to get these things.
23 For example, he made a request for copies of al-Hayat, and if I'd leave

1 Arabic media such as CNN in Arabic or others similar to that; and as
2 well as the follow-up on the phone call, because we thought we would be
3 able to get the phone call, but then ran into some undoable
4 difficulties at that time due to a new administrative rule.

5 So that was the primary purpose. But for me, just speaking
6 for me, every opportunity to have an individual--to have an interview
7 with an individual might be an opportunity for information,
8 intelligence, or substantive information. So there is always that
9 aspect for me again personally when I have an opportunity to interview
10 someone.

11 Q [MR. MURPHY]: All right. Your Honor, I have no further
12 questions.

13 MJ [CAPT ALLRED]: Thank you. Redirect.

14 **RECROSS-EXAMINATION**

15 **Questions by the defense counsel:**

16 Q [MR. SCHNEIDER]: Mr. [REDACTED] with regard to the subjects you
17 were just asked about on redirect, I don't have any re-cross
18 examination. But I'd like to ask you one last question. Would you say
19 you were uniquely qualified to interview Mr. Hamdan?

20 A [MR. [REDACTED]]: Some might characterize it that way, but I tend
21 not to use phrases like that.

22
23 Q [MR. SCHNEIDER]: Do you recall saying that you were almost--you

1 were almost uniquely qualified, based on your background, to interview
2 Mr. Hamdan?

3 A [MR. ██████████] If I said--that would be more like me, to say
4 "almost uniquely." But I'd want to give ample praise to my partner.

5 Q [MR. SCHNEIDER]: No need to be modest. So based on your
6 knowledge and experience and training and your unique, your almost
7 unique characteristics and abilities to interview Mr. Hamdan, after 40
8 plus other agents had interviewed him, over hundreds of hours, with
9 hundreds of pages of reports, after 450 days had gone by, they sent you
10 down to interview him, right?

11 A [MR. ██████████] Yes, sir.

12 MJ [CAPT ALLRED]: Members of the court, do you have any questions
13 for Agent ██████████ Apparently not. Thank you, Agent ██████████

14 CTC [MR. MURPHY]: We're going to ask him the stay with us a
15 little bit, but we certainly don't need him for any questioning,
16 further questions today.

17 MJ [CAPT ALLRED]: Thank you. You can withdraw from the courtroom
18 and stand by, I guess, until counsel tell you that they won't need you
19 any more.

20 WIT [MR. ██████████] Thank you, sir.

21 MJ [CAPT ALLRED]: Thank you.

22 CTC [MR. MURPHY]: Your Honor, we believe that we are about to
23 rest, but would request a 39A to wrap up a few final quick matters

1 outside the presence of the jury.

2 MJ [CAPT ALLRED]: Okay. Is there any documentary evidence that
3 you want to offer?

4 CTC [MR. MURPHY]: There is. I don't think this will take long.

5 MJ [CAPT ALLRED]: Okay. Members of the court, if you'll step
6 into the deliberation room.

7 **[Witness and members of the court withdrew from the courtroom.]**

8 **[The military commission terminated and the R.M.C. 803 session**
9 **commenced at 1441, 31 July 2008.]**

10 MJ [CAPT ALLRED]: Please be seated.

11 CTC [MR. TRIVETT]: Sir, at this time, the prosecution would offer
12 Prosecution Exhibit No. 143 for identification, which is a Department
13 of Homeland Security document which is described as a certificate of
14 nonexistence of record, indicating that there are no records of Salim
15 Hamdan ever being a U.S. citizen or ever having entered the United
16 States.

17 MJ [CAPT ALLRED]: Why are we doing this outside the presence of
18 the members?

19 CTC [MR. MURPHY]: It's the second item, Your Honor, that may be
20 controversial.

21 MJ [CAPT ALLRED]: Oh, okay, may be. Any objection to Prosecution
22 Exhibit 143?

23 CDC [MR. SWIFT]: No.

1 MJ [CAPT ALLRED]: Well, without objection, Prosecution Exhibit
2 143 will be admitted and be published to the members at the appropriate
3 time.

4 TC [LCDR STONE]: Sir, we have also submitted to the Court
5 Reporter and to the defense and the defense had no objections to the
6 December 5 through December 7 testimony of Said Boujaadia.

7 MJ [CAPT ALLRED]: Do you have a written transcript to provide to
8 the court?

9 CDC [MR. SWIFT]: Yes, I think the government will be providing
10 it.

11 TC [LCDR STONE]: Right, it has been provided to the court
12 reporter now sitting on your podium.

13 MJ [CAPT ALLRED]: Okay, and this is Prosecution Exhibit 144. Any
14 objection to Prosecution Exhibit 144?

15 CDC [MR. SWIFT]: Now, since it is testimony, I do have a point.
16 I don't have an objection to the introduction of it, but as to form
17 it's not sent back as written testimony. This is a previous witness
18 who appeared in this case, who I agree is unavailable. The rules are
19 quite clear it was in fact subject to direct and cross-examination, so
20 it is appropriate.

21 However, it's not given greater weight. What needs to happen
22 is it needs to be sat and read to the jury at the appropriate time. If
23 the government wants to bring the jury back in or the members back in

1 and have it read to them, that's fine. But it should be put in as
2 normal testimony, like any other deposition or unavailable witness
3 would be provided.

4 MJ [CAPT ALLRED]: I agree with you. If you want, you can read
5 this testimony in question and answer format or something else, but I
6 can't send it back to the members.

7 We'll have this document marked as Prosecution Exhibit 144,
8 and I don't think I'll admit it because then it would go back to the
9 members. But why don't you figure out what you want to do with that,
10 okay.

11 CTC [MR. MURPHY]: We have one other matter, Your Honor. During
12 [REDACTED] testimony, he actually read verbatim an Arabic note which
13 we've referred to as the PIKA note, which was introduced as Government
14 Exhibit 59.

15 We asked the Court Reporters to produce the actual definition
16 of or actual translation on the record and they have produced that
17 transcript, and we have it available for display, if we could show 59B.

18 MJ [CAPT ALLRED]: What do you propose to do with this?

19 CTC [MR. MURPHY]: We would offer it. It's testimony that was
20 read into the record, but obviously the members may not recall it. And
21 we have a certified--we have an official transcript from the----

22 MJ [CAPT ALLRED]: I think we're going to have the same objection
23 from the defense, for the same reason.

1 CDC [MR. SWIFT]: If the members want something read back to them,
2 the members will ask.

3 MJ [CAPT ALLRED]: I think that's the right answer, my friend.

4 CTC [MR. MURPHY]: All right. Well, that's why we asked for the
5 39A.

6 MJ [CAPT ALLRED]: So that's Prosecution Exhibit 59?

7 CTC [MR. MURPHY]: It was marked as 59. This was going to be 59B.
8 It's 59A.

9 MJ [CAPT ALLRED]: 59 is offered, but not admitted, then.

10 CTC [MR. MURPHY]: 59 is in and 59A is in. This would have been
11 59B.

12 CDC [MR. SWIFT]: Well, let's be clear. 59A is not in. If they
13 want to offer it----

14 MJ [CAPT ALLRED]: This is 59B.

15 CDC [MR. SWIFT]: Well, 59A I believe is the----

16 CTC [MR. MURPHY]: It's the PIKA note, part of the PIKA note.

17 CDC [MR. SWIFT]: Okay.

18 MJ [CAPT ALLRED]: The note itself.

19 CTC [MR. MURPHY]: 59 and 59A are part of the PIKA note.

20 MJ [CAPT ALLRED]: Okay. So 59B and 144 the record will reflect
21 were offered, but not admitted into evidence. 143, the INS
22 certificate, without objection is admitted.

23 CTC [MR. MURPHY]: Sir, we're going to not offer this right now.

1 If it comes up as a requirement for rebuttal or something, we may. But
2 we'll withhold.

3 MJ [CAPT ALLRED]: Okay, so 144, the transcript, is offered, but
4 not admitted. That's where we're at.

5 CTC [MR. MURPHY]: Yes.

6 MJ [CAPT ALLRED]: And if the government wants to read it at some
7 other point, we can take that up then.

8 CTC [MR. MURPHY]: Yes, sir.

9 MJ [CAPT ALLRED]: Fair enough?

10 CTC [MR. MURPHY]: Sure.

11 MJ [CAPT ALLRED]: Okay. So are you ready to rest?

12 CTC [MR. MURPHY]: Yes, sir, the government rests.

13 MJ [CAPT ALLRED]: The government rests.

14 CDC [MR. SWIFT]: I do have a 917 motion, Your Honor.

15 MJ [CAPT ALLRED]: Okay. Is it all those pieces of paper?

16 CDC [MR. SWIFT]: It's part. There are multiple parts. I have a
17 written motion for the court, and I'll hand it up to the Military
18 Judge. I'll also be citing one case in it, the United States, in
19 addition--the *United States versus Pizarr*, Second Circuit.

20 While we are making a 917 motion as to all, I only would
21 like--beyond the written motion that I've provided the court, I want to
22 orally direct the court's attention to two particular charges and
23 specifications, actually three specifications in particular, that I do

1 not believe that there has been any sufficient evidence to go to the
2 members.

3 The first of them is specification 2 to charge 1, which is
4 the conspiracy regarding the SA-7 missiles. This was charged as known
5 or unknown conspirators and we don't know who the conspirators were any
6 more than when we began. In fact, the only evidence that we've had
7 placed in before this court is that Mr. Hamdan was in possession of
8 missiles, not in a fireable condition, but the missile components
9 themselves. That's the only evidence before this court.

10 The reason that I handed up to Your Honor was, while I
11 couldn't find a directly analogous case to possession of SA-7 missiles,
12 *Figueroa* is a Second Circuit drug possession case, where it set out
13 quite clearly that the mere possession of drug paraphernalia, which I
14 would argue is clearly analogous here, is insufficient to set out a
15 charge of conspiracy.

16 In other words, you may have something that would be
17 necessary for a drug conspiracy, but simply possession of an illegal
18 paraphernalia itself which was illegal did not create the inference of
19 a conspiracy and an existing conspiracy to use those missiles.

20 In fact, we're in an even stronger position here, because the
21 SA-7 missiles are such that it would not require another person to
22 participate. In other words, the conspiracy starts, as the *Figueroa*
23 case points out, at its most basic idea that there must be two people

1 who have a meeting of the minds for a criminal intent.

2 Merely from the possession of missiles, which were readily
3 available in Afghanistan, there's no showing that Mr. Hamdan met or
4 agreed with anyone on their use. That becomes pure speculation. In
5 fact, probably one of the government theories is Mr. Hamdan would shoot
6 down airplanes from the sky, and that certainly hasn't been ruled out.

7 And since there is no known conspirator and since the item
8 itself does not require a conspiracy to use, there has been no showing
9 of a meeting of minds, even by the circumstantial evidence that a
10 conspiracy had to exist for Mr. Hamdan to be in possession of these
11 missiles. Absent a meeting of the minds, you don't have a crime of
12 conspiracy.

13 The next part that I draw to the court's attention is again
14 with regards to the missiles, and that's with regards to specifications
15 3 and 4. And if I could have the ELMO up. The ELMO. I wanted to make
16 sure that I had the language exactly right. I'm not as good with the
17 ELMO as my co-counsel is on this.

18 MJ [CAPT ALLRED]: He's not talking about you, Mr. Schneider.
19 Somebody else is the one he's referring to.

20 CDC [MR. SWIFT]: It's Mr. McMillan, standing behind me, who is
21 extraordinarily----

22 CDC [MR. SCHNEIDER]: It's me as well when I said that.

23 CDC [MR. SWIFT]: What the government charged was that Mr. Hamdan

1 provided one or more SA-7 missiles to be used in the preparation and
2 carrying out an act of terrorism, whether he gave them to al-Qaeda or
3 to the Taliban. Now, the evidence of course cannot be clearer. It
4 can't be. He never got there. No matter what the theory of the
5 government's case is, he didn't get it to them.

6 He is not charged, as he is charged elsewhere in this
7 specification, with transportation, and to argue somehow there's a fair
8 inference when we use the word "transportation" in another
9 specification just doesn't hold water. He was charged with providing
10 the missiles to al-Qaeda. That's the plain language of what was
11 charged. It did not happen.

12 Now, there is a lesser included offense, an attempt. And I
13 would not argue, Your Honor, that with regards this particular charge
14 that there is insufficient evidence for an attempt charge to go to the
15 jury. But there is no evidence that it actually happened. In fact,
16 every bit of evidence that we have is that it did not.

17 The same is true of the fourth charge, which is simply a
18 restatement, which said, charged in the alternative. But again, we did
19 not use the language on this of transporting. We said instead that he
20 did provide.

21 So again, we find ourselves at the exact same place. The
22 government has not provided any evidence that these missiles were in
23 fact provided to al Qaeda or to the Taliban.

1 MJ [CAPT ALLRED]: So with respect to both Specifications 3 and 4,
2 you concede that the LIO of attempt could go back to the members?

3 CDC [MR. SWIFT]: I concede----

4 MJ [CAPT ALLRED]: But the greater offense you think has not----

5 CDC [MR. SWIFT]: We have a general argument, but I would look at
6 specifically that there is simply no way provided to go back, and
7 attempt, interpreting on the other elements which we've argued, whether
8 that in fact was material support. And I point--in one part we were
9 charged on the specification with the Taliban as an alternative source.
10 The Taliban for I believe it's Specification 4 has to be an
11 international terrorist organization.

12 And we've had lots of evidence about al-Qaeda and no evidence
13 that the Taliban is an international terrorist organization, which
14 throws us to the next problem in material support, because they
15 have----

16 MJ [CAPT ALLRED]: Are you still arguing about Specification 4?

17 CDC [MR. SWIFT]: Specification, I believe it is----

18 MJ [CAPT ALLRED]: Of Charge II?

19 CDC [MR. SWIFT]: Yes.

20 MJ [CAPT ALLRED]: Okay.

21 CDC [MR. SWIFT]: And just pointing out the other problem in here
22 is that they have not established whether the missiles were going to
23 the Taliban or to al Qaeda. The government elected that those could

1 both be possibilities, and certainly had they established that both al-
2 Qaeda and the Taliban were international terrorist organizations it
3 wouldn't matter.

4 But now it's here: Well, we don't really know where they're
5 going, but if the jury flipped a coin and say it's al-Qaeda, then
6 you're guilty; otherwise you're not. And having not made that
7 distinction, the government in its charging leaves wide open that the
8 members are left to speculate. And in finding beyond a reasonable
9 doubt they simply cannot do that.

10 So as far as the terrorist, material support for a terrorist
11 organization charge, I don't believe they even have attempt, though on
12 a different grounds, because they have not shown both organizations
13 which they set out, just to be clear there.

14 MJ [CAPT ALLRED]: Okay.

15 CDC [MR. SWIFT]: The final part is that we believe that the
16 government has continued to proceed on its criminal enterprise theory.
17 They have not shown that Mr. Hamdan engaged in a knowing meeting of the
18 minds to conduct any of the acts that they charge. Were this in a
19 criminal enterprise theory, that you join an organization that does
20 these things--commits acts of terrorism--under that theory one can
21 become--in the theory that they can charge in conspiracy, they would
22 have met the burden.

23 But here, even their last witness's testimony regarding

1 bayat, which I presume is the government's theory of when the meeting
2 of the minds occurred--I would presume that that would be at that
3 point; they may have a different place for when the meetings of the
4 minds occurred; but I haven't heard evidence of when that point was--is
5 that they have not shown that Mr. Hamdan agreed with any of the tactics
6 that were being used to accomplish the greater end. And the meeting of
7 the minds must have an agreement to the ends to be carried out, the
8 criminal ends to be carried out. That would be the unlawful attacks.

9 Now, mere presence when he has bragged about it does not show
10 that. Instead, it simply shows an awareness, which again would go to
11 the original government theory of joint criminal enterprise. Had they
12 shown that Mr. Hamdan had been present during the planning of any
13 attack, had been present when the particulars of an attack was
14 discussed or the methodology that would be used or even a location from
15 which it could be inferred, they could argue that by Mr. Hamdan's
16 silence in the face of those things, case law well supports, the jury
17 might infer that he agreed with it because a reasonable person, if they
18 were present, if they were in the room and objected, would object on
19 those.

20 But the testimony has been the opposite, that the particulars
21 were kept extremely quiet. So again we find ourselves in a place where
22 in classic conspiracy law, which this is what this is, a classic
23 conspiracy, there is on showing of the meeting of the minds that is the

1 necessary prerequisite.

2 In fact, with regards to some of the actions, for instance
3 the COLE attack, the testimony and the only testimony on what Mr.
4 Hamdan knew in advance or had any idea of or knew after the attack was
5 he thought it was by the Israelis, demonstrating clearly that he did
6 not know the operational plans.

7 For the others, the testimony the government has put on is
8 that he knew there were operations, and that's insufficient to make him
9 guilty of the charge. Now, it would be sufficient on the material
10 support charge, because material support does not require the meeting
11 of the minds and agreement, merely knowledge of the activity.

12 Thank you, Your Honor.

13 MJ [CAPT ALLRED]: Thank you.

14 TC [LCDR STONE]: Sir, we'd like to respond in writing.

15 MJ [CAPT ALLRED]: Well, actually I was hoping that you would let
16 me think about this tonight and give you my decision in the morning.

17 Do you want an immediate decision?

18 CDC [MR. SWIFT]: Well, our next witness is not in any way related
19 and it won't affect case strategy immediately.

20 MJ [CAPT ALLRED]: I haven't had a chance to read either your
21 motion or the case you provided. And I'm sure the government has been
22 preparing for this moment for many days. But if you can respond in
23 writing relatively quickly after we close for the day, I'll let you do

1 that.

2 TC [LCDR STONE]: Yes, sir.

3 MJ [CAPT ALLRED]: I don't mean minutes, but I do mean an hour or
4 two. Okay?

5 TC [LCDR STONE]: Yes, sir.

6 MJ [CAPT ALLRED]: Okay. Well, I'll take the motion under
7 advisement then. Fair enough? Okay, so now when--the government has
8 rested and the defense is ready then to begin its case on its merits?

9 CDC [MR. SWIFT]: We are, Your Honor.

10 MJ [CAPT ALLRED]: Who is your first witness?

11 CDC [MR. SWIFT]: Lieutenant Commander Mizer will be handling it
12 and I'm going to sit back and let him talk.

13 MJ [CAPT ALLRED]: He's on now.

14 DC [LCDR MIZER]: Colonel [REDACTED] [REDACTED] Your Honor.

15 MJ [CAPT ALLRED]: Okay. Let me just--let me just announce what I
16 think is--what did you tell me? I think this witness is going to be
17 able to identify himself and then it becomes a classified witness. Is
18 that what the parties have decided?

19 DC [LCDR MIZER]: I believe that that is correct, Your Honor.

20 MJ [CAPT ALLRED]: Okay. What I would--what that means then is
21 we'll have to clear the gallery as soon as he is identified, of anyone
22 who's not appropriately cleared. So what I would like to do is take a

1 recess, let those who want to come back in for the identification of
2 the witness make that decision, with the understanding that they'll
3 have to get up and leave again as soon as we get to the classified
4 portions of his testimony. And those who want to just call it a day or
5 go to the media center or whatever other options they have can do that.

6 DC [LCDR MIZER]: Your Honor, I think I can ask about three or
7 four questions, just basic background, and then we'll start getting
8 into classified information.

9 MJ [CAPT ALLRED]: Okay. Well, we've been on the record for an
10 hour. Why don't we take a recess and let people plan for the next
11 phase, and we'll come back in a few minutes?

12 BAILIFF: All rise.

13 **[The military commission recessed at 1501, 31 July 2008.]**

14 **[The military commission was called to order at 1516, 31 July 2008.]**

15 MJ [CAPT ALLRED]: Please be seated. Court's called to order.

16 Is the government ready to proceed?

17 TC [MAJ ASHMAWY]: Your Honor, just for the record, and for the
18 members, just to let you know we put into evidence Prosecution Exhibit
19 143, which is an ICE document, just to show that the accused was, in
20 fact, an alien, not a U.S. citizen, at the time of the charges.

21 Beyond that, the government rests.

22 MJ [CAPT ALLRED]: The government rests. Is the defense ready to
23 proceed?

1 CDC [MR. SWIFT]: Yes, Your Honor. The defense calls Colonel

2 [REDACTED] [REDACTED]

3 MJ [CAPT ALLRED]: Bailiff, would you call Colonel [REDACTED] [REDACTED]
4 please.

5 CDC [MR. SWIFT]: Your Honor.

6 MJ [CAPT ALLRED]: Yes.

7 CDC [MR. SWIFT]: If I can address the court as Colonel [REDACTED] is
8 being brought in. We understand that the court's ruling is that this
9 will be a closed session. We request an expedited redacted transcript
10 of this portion of the proceedings in the interest of an open
11 proceeding, to the extent possible.

12 MJ [CAPT ALLRED]: What do you mean by that?

13 CDC [MR. SWIFT]: What I request is that, to the extent that we
14 can, that we expedite production of this portion of the transcript and
15 that those portions that are SECRET be redacted, but that the rest be
16 available for the observers of the court.

17 MJ [CAPT ALLRED]: Well, we can give that a whirl. My impression
18 is that everything after "My name is Colonel [REDACTED] essentially is
19 going to be classified. But we'll take a look at that at the end of
20 his testimony. I do want this to be as open to the public and to the
21 press as possible, and for that reason I'm going to rely on counsel to
22 tell me when we've reached the point where we need to close the
23 proceedings. If the defense objects, we'll take that up at that time.

1 Q [LCDR MIZER]: Did you take a TDY assignment that month?

2 A [COL ██████████] I did. Shortly after 9-11, I was requested to go
3 down TDY to assist with the Joint Security Directorate at SOUTHCOM.

4 Q [LCDR MIZER]: Your Honor, I believe that the response to my
5 next series of questions will be classified. I would note for the
6 record that it's the defense that is requesting to close this session,
7 but that this is necessary for the government to protect this
8 information.

9 MJ [CAPT ALLRED]: Well, we'll take a moment then in place and ask
10 those who are not cleared, it is classified at the level of SECRET.
11 Mr. Powell do you want to send your troopers through the audience and
12 make sure we have only cleared personnel in the courtroom then for the
13 next session. Bailiff, can you just check with the technology folks to
14 make sure that we have cut the feed too.

15 TC [LCDR STONE]: Government is going on--is taking the defense at
16 its word that it's going into classified information, so based on the
17 defense's proffering that we're going to be talking about classified
18 information, not that the government has requested that it specifically
19 be classified.

20 DC [LCDR MIZER]: Well, Your Honor, if the government would like,
21 I'll ask the questions, and Mr. Powell can clear the courtroom.

22 TC [MAJ ASHMAWY]: Your Honor, obviously the court knows that
23 we're under an obligation to protect certain pieces of information

1 MJ [CAPT ALLRED]: Why don't we go ahead and clear the courtroom
2 now of anyone who's not cleared. And I will ask the court reporters to
3 expedite the transcript of this witness' testimony for review and
4 release to the press and the public as soon as possible. And we'll
5 reopen the court as soon as we possibly can. Okay, thank you.

6 And members of the court, if you're taking notes, these notes
7 will be classified. You'll have to either leave them in your folders
8 overnight or if you wish to just not take notes and remember this
9 witness's testimony, that's your choice. But if you take notes, please
10 mark that page "SECRET" and let's treat it as SECRET material.

11 Okay. Mr. Powell, you've completed your security sweep of
12 the room?

13 MR. POWELL: Yes, sir.

14 MJ [CAPT ALLRED]: And I've gotten the high sign from the
15 technology booth that the feeds--now, just to make sure the video of
16 your image can still be broadcast outside the courtroom. I'd like to
17 have the video broadcast if that's possible, while just cutting the
18 audio. We'll do that.

19 DC [LCDR MIZER]: And Your Honor, I also need to clarify, because
20 there is going to be a number of classified documents that I'd like to
21 introduce with Colonel [REDACTED] We also need to make sure when those
22 electronic documents are called up on our equipment here that, that's
23 not also being broadcast.

1 MJ [CAPT ALLRED]: Okay. I'll ask--Sergeant Mac, he says he's
2 ready for those electronic documents.

3 DC [LCDR MIZER]: Thank you, sir.

4 [The following pages are a closed session and can be located in the
5 secret annex of the record of trial: 3576-3647.]

6 [END OF PAGE]